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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92045000
Party	Defendant SPORTSMAN'S WAREHOUSE, INC. SPORTSMAN'S WAREHOUSE, INC. 7035 HIGH TECH DRIVE MIDVALE, UT 84047
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Submission	Answer
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Date	07/27/2006
Attachments	SW - Answer to Amended Petition.pdf ( 8 pages )(403296 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Registration No. 2,390,988

For the Mark SPORTSMAN'S WAREHOUSE HUNTING FISHING CAMPING RELOADING  
OUTERWEAR FOOTWEAR and DESIGN

Date registered: October 3, 2000

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Bass Pro Trademarks, L.L.C.,

Petitioner,

Cancellation No. 92045000

v.

Sportsman's Warehouse, Inc.,

Registrant.

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**REGISTRANT'S ANSWER AND AFFIRMATIVE  
DEFENSES TO AMENDED PETITION TO CANCEL**

The Registrant Sportsman's Warehouse, Inc. submits this Answer to the Petition to Cancel submitted by Petitioner Bass Pro Trademarks, L.L.C. Except as expressly admitted below, Registrant denies all allegations contained in the Amended Petition to Cancel.

1. Registrant denies the allegations contained in paragraph 1 of the Amended Petition to Cancel, except Registrant admits only that Petitioner is the owner of U.S. Trademark Registration No. 2,071,417.

2. Registrant denies the allegations contained in paragraph 2 of the Amended Petition to Cancel.

3. Registrant denies the allegations contained in paragraph 3 of the Amended Petition to Cancel.

4. Registrant denies the allegations contained in paragraph 4 of the Amended Petition to Cancel.

5. Registrant denies the allegations contained in paragraph 5 of the Amended Petition to Cancel.

6. Registrant denies the allegations contained in paragraph 6 of the Amended Petition to Cancel, except as to the content of the referenced application. Respondent has supplemented and clarified its Answers to Petitioner's Interrogatories since Petitioner filed its Amended Petition. *See Exhibit A, Respondent's Amended Answer to Petitioner's Interrogatory No. 8.*

7. Registrant denies the allegations contained in paragraph 7 of the Amended Petition to Cancel, except as to the content of the referenced response to the office action.

8. Registrant denies the allegations contained in paragraph 8 of the Amended Petition to Cancel.

9. Registrant denies the allegations contained in paragraph 9 of the Amended Petition to Cancel.

#### **1. AFFIRMATIVE DEFENSES**

1. Petitioner's Amended Petition to Cancel fails to state a claim upon which relief may be granted.

2. Registrant has superior rights over Petitioner in the mark SPORTSMAN'S WAREHOUSE.

3. Registrant owns the service mark SPORTSMAN'S WAREHOUSE.

4. Petitioner has disclaimed exclusive rights to the mark SPORTSMAN'S WAREHOUSE.

5. Petitioner has no trademark or service mark rights for the phrase SPORTSMAN'S WAREHOUSE.

6. Petitioner uses the phrase SPORTSMAN'S WAREHOUSE only in conjunction with the mark BASS PRO SHOPS.

7. Any misapplication of the statutory notice on the part of the Respondent with regard to Registration No. 2,390,988 was inadvertent and *de minimis*.

8. Petitioner has abandoned any rights in SPORTSMAN'S WAREHOUSE mark and in its registered BASS PRO SHOPS SPORTSMAN'S WAREHOUSE and DESIGN mark.

9. The Amended Petition to Cancel must be dismissed because of laches, acquiescence, and/or estoppel.

10. Registrant reserves the right to rely on all matters constituting an avoidance or affirmative defense to the extent that such defenses are supported by information developed through discovery or by evidence during testimony or at trial.

WHEREFORE, Registrant respectfully requests that Petitioner's Amended Petition to Cancel be denied, and that Registration No. 2,390,988 continue to be registered.

DATED: July 27 2006.

Respectfully submitted,

LINDQUIST & VENNUM PLLP

By: 

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**ATTORNEYS FOR REGISTRANT  
SPORTSMAN'S WAREHOUSE, INC.**

Registrant's Amended Answer and  
Affirmative Defenses to Petition to Cancel  
Cancellation No. 92045000

EXHIBIT A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Registration No. 2,390,988

For the Mark SPORTSMAN'S WAREHOUSE HUNTING FISHING CAMPING RELOADING  
OUTERWEAR FOOTWEAR and DESIGN

Date registered:       October 3, 2000

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Bass Pro Trademarks, L.L.C.,

Petitioner,

Cancellation No. 92045000

v.

Sportsman's Warehouse, Inc.,

Respondent.

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**SPORTSMAN'S WAREHOUSE, INC.'S AMENDED ANSWER  
TO PETITIONER'S INTERROGATORY NO. 8**

**GENERAL RESPONSES**

1.     The General Responses and the General and Specific Objections apply to all answers of Respondent Sportsman's Warehouse, Inc. ("Sportsman's Warehouse") to Petitioner's interrogatories. In connection with these answers, Sportsman's Warehouse response is made without waiving or intending to waive, and expressly reserving: (a) the right to object on the grounds of competency, privilege, relevancy, materiality or any other proper ground to the use of the answers for any purpose, in whole or in part, in any subsequent step or proceeding in this action or any other action; (b) the right to object on any and all grounds at any time to other interrogatories or other discovery procedures involving or relating to the subject matter of the

interrogatories; and (c) the right at any time to revise, correct add to or clarify any of the answers propounded herein.

2. The answers herein reflect the present state of Sportsman's Warehouse's knowledge and information following investigation regarding Petitioner's interrogatories. The investigation is continuing. Except as otherwise stated below, an objection to a interrogatory indicating that Sportsman's Warehouse will produce documents relating to the interrogatory does not necessarily mean that such documents exist. Sportsman's Warehouse reserves the right to supplement these answers, and to rely upon, at any time, including trial, subsequently discovered information or information omitted from these responses as a result of mistake, error, oversight, or inadvertence.

#### **GENERAL OBJECTIONS**

1. Sportsman's Warehouse objects to each interrogatory to the extent that it seeks information that is subject to the attorney-client privilege, work product privilege or other privilege on the ground that privileged matter is exempt from discovery.

2. Sportsman's Warehouse objects to any and all instructions or definitions on the grounds that they are overly broad and beyond the requirements imposed by the applicable rules of procedure.

3. Sportsman's Warehouse does not waive any of its general or particular objections in the event it furnishes information or documents coming within the scope of any such objections.

4. Any responsive documents to be produced will be produced at a time and place mutually agreeable to counsel.

**AMENDED ANSWER TO INTERROGATORY NO. 8**

**INTERROGATORY NO. 8:** For each year, beginning with the date Respondent's Mark was first used in the United States, identify any and all businesses, retailers, or distributors to whom Respondent has sold goods at wholesale under Respondent's Mark.

**ANSWER:** Respondent reaffirms its objection to Interrogatory No. 8 on the grounds that it is vague and overly broad. Subject to and without waiving these objections and the foregoing General Objections, Sportsman's Warehouse responds that it takes the phrase "under Respondent's mark" to refer to sales of goods actually bearing Respondent's mark, such as logoed products. Respondent does not sell logoed products as a wholesaler. Respondent has, however, from time to time sold goods at wholesale. Respondent states that its parent company, Sportsman's Warehouse Holdings, Inc., engages in wholesale sales through its subsidiary Pacific Flyway. Pacific Flyway was affiliated with Sportsman's Warehouse prior to December 16, 1998. During that time, it was the business practice of Pacific Flyway to at times send wholesale customers to Sportsman's Warehouse when Pacific Flyway was out of stock in a required item. Sportsman's Warehouse would then sell items to such customers at wholesale. Prior to December 16, 1998, Sportsman's Warehouse would also at times sell items in volume to certain customers at wholesale. Respondent is presently aware of no "advertising or promotional materials" related to this practice.



**AS TO OBJECTIONS:**

DATED: June 17, 2006.

**LINDQUIST & VENNUM P.L.L.P.**

By: \_\_\_\_\_

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**ATTORNEYS FOR RESPONDENT  
SPORTSMAN'S WAREHOUSE, INC.**

**AS TO AMENDED ANSWER:**

**SPORTSMAN'S WAREHOUSE, INC.**

By: \_\_\_\_\_

(Signature)

DALE R. SMITH

(Printed Name)

Subscribed and sworn to before me  
this 8 day of June, 2006.

\_\_\_\_\_  
Notary Public

